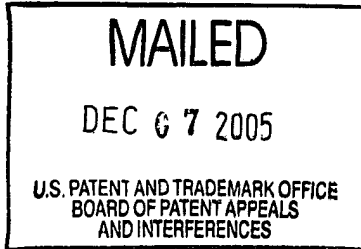


UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte GLENN G. BINGHAM  
and  
EDWARD B. WARBURTON

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Application 09/729,051

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was received electronically at the Board of Patent Appeals and Interferences on July 19, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

A review of the Image File Wrapper (IFW) indicates that appellants filed an Appeal Brief on October 8, 2004 using the format set forth in 37 CFR § 41.37(c). However, the Appeal Brief does not comply with 37 CFR § 41.37(c).

37 CFR § 41.37 states:

. . . . .

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

. . . . .

(ix) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix.* An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

An in-depth review of the Appeal Brief filed October 8, 2004 indicates that the following sections are missing:

- 1) "Evidence appendix," as set forth in 37 CFR § 41.37(c)(1)(ix); and

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2) "Related proceedings appendix," as set forth in 37 CFR § 41.37(c)(1)(x).

A supplemental brief that is in compliance with § 41.37(c) is required. For more information, see the United States Patent and Trademark website [www.uspto.gov](http://www.uspto.gov), and, in particular, the web page entitled "More Information on the Rules of Practice Before the Board of Patent Appeals and Interferences, Final Rule" located at the following URL:

[www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html](http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html)

In addition, the Examiner's Answer mailed January 4, 2005 does not comply with the headings set forth in the new rules under 37 CFR § 41.37(c). Correction is required.

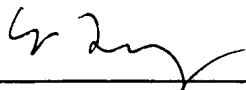
Lastly, an Information Disclosure Statement (IDS) was filed August 29, 2005 while the IFW was in the jurisdiction of the Board of Patent Appeals and Interferences. The IDS needs to be considered by the Primary Examiner with respect to compliance with the criteria set forth in 37 CFR §§ 1.97 and 1.98. A communication notifying appellants of the Primary Examiner's decision is required.

Accordingly, it is

ORDERED that the application is returned to the  
Examiner:

- 1) to hold the Appeal Brief filed October 8, 2004  
defective;
- 2) for notification to appellants to file a supplemental Appeal Brief in compliance with 37 CFR § 41.37;
- 3) for consideration of the supplemental Appeal Brief;
- 4) to vacate the Examiner's Answer mailed January 4, 2005, and issue a new Examiner's Answer in compliance with the new rules which became effective on September 13, 2004;
- 5) to have a complete copy of any subsequent Examiner's Answer scanned into the IFW;
- 6) for consideration of the IDS filed August 29, 2005 and appropriate notification to appellants regarding the Primary Examiner's decision; and
- 7) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

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CRF:psb

Application 09/729,051

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